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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/503,401 | 02/14/2000 | Ramin Rezaiifar | QCPA451DIV2 | 6558 |
| 23696 | 7590 | 02/08/2006 | EXAMINER | |
| QUALCOMM, INC 5775 MOREHOUSE DR. SAN DIEGO, CA 92121 | | | PHILPOTT, JUSTIN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2665 | |

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/503,401

Applicant(s)

REZAIIFAR ET AL.

Examiner

Justin M. Philpott

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 8, 2005 has been entered.

Response to Arguments

2. Applicant's arguments, see pages 2-3, filed December 8, 2005, with respect to the rejection(s) of claim(s) 1-3 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of applicant's admitted prior art (AAPA) as discussed in the following office action.

Claim Rejections - 35 USC § 103

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,137,789 to Honkasalo in view of applicant's admitted prior art (AAPA).

Regarding claim 1, Honkasalo discloses a mobile station for requesting multiple code channels for high speed data transmission. The mobile station requests a number of parallel code channels and a base station signals an assigned number of channels for a given period of time

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(col. 5, lines 58-67). Honkasalo shows data rates dependent on the number Supplemental Code Channels in Table I (col. 7, lines 1-12). The data rate of transmission is implicitly stated in the number of channels assigned to the mobile station by the base station. The assignment of a data rate is necessarily transmitted to the mobile station prior to and independent of data transmission. The base station must first transmit the assignment of channels before a mobile station can transmit data on those channels. Thus, the signaling of assigned channels and given period of time by the base station meets the limitations of transmitting a message indicative of the rate of said data prior to and independent of data transmission and the time interval over which data transmission will be transmitted.

However, Honkasalo may not specifically disclose that data is transmitted using one data transmission channel.

Applicant's specification specifically discloses that applicant's invention is in accordance with the well known prior art teachings of the IS-95 standard (e.g., see specification, page 1, line 34). Further, AAPA discloses that, according to the IS-95 standard, data comprising both traffic data and voice data is partitioned into frames in a traffic channel (e.g., see specification, page 2, lines 3-5). Further, in addition to AAPA, Examiner takes official notice that in accordance with the IS-95 standard data is transmitted using one data transmission channel. Still further, in addition to and in support of Examiner's official notice, the previously cited art of Odenwalder et al. (USP 5,930,230) clearly admits exactly this in its assessment of the well known prior art: "In accordance with the IS-95 standard each subscriber unit 10 transmits user data via a single channel" (col. 2, lines 1-2). Additionally, it is noted that the above passage in Odenwalder is disclosed in background information of an invention (i.e., it is well known prior art). Thus, the

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above passage is not a novel aspect of the invention of Odenwalder, having the same assignee of applicant's instant application, and even if Odenwalder comprised the same inventive entity of the instant application (which it does not), the passage is at best admitted prior art. Accordingly, both AAPA and well known prior art clearly disclose that one of ordinary skill in the art would transmit data using one data transmission channel if transmission is to be in accordance with the well known standard of IS-95. Furthermore, it is well known in the art that applying a well known standard, or protocol, to a system provides the system with significantly improved industrial applicability. Thus, at the time of the invention it would have been obvious to one of ordinary skill in the art to transmit data in the invention of Honkasalo since such transmission is well known in the art in order to comply with the well known IS-95 standard, and since it is well known in the art that applying a well known standard, or protocol, to a system provides the system with significantly improved industrial applicability.

Regarding claim 2, the frame type is inherent in the signaling of assigned code channels. Honkasalo discloses that supplemental code channels may be used by the mobile station to transmit high speed data (col. 5, lines 58-67). Thus, in response to a mobile station request, the signaling from the base station indicates the number of assigned supplemental code channels, whereby supplemental channel is the frame type.

Regarding claim 3, Honkasalo discloses signaling a data transmission rate, time interval and frame type from a base station to a mobile station (col. 5, lines 58-67, see also Table 1). Honkasalo fails to expressly disclose that the frame type is indicated by two bits and that the data transmission rate and time interval are both indicated by four bits. However, it is generally considered to be within the ordinary skill in the art to adjust, vary, select or optimize the

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numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on Applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937), Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943), In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945), In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955), In re Saether, 492 F.2d 849, 18 1 USPQ 36 (CCPA 1974),. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977), In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). At the time the invention was made it would have been obvious to a person of ordinary skill in the art to use as many bits as necessary to indicate the frame type, data rate and time interval in the invention of Honkasalo. One of ordinary skill in the art would have been motivated to do this because the number of bits needed to indicate these values may be greater or less than the specified number depending on the system implementation. For example, Honkasalo indicates that the data rate is specified by the number of supplemental channels that are assigned. If a maximum of eight channels may be assigned, then only three bits are necessary to indicate the data rate. Thus, at the time the invention was made it would have been obvious to a person of ordinary skill in the art to use as many bits as necessary to indicate the frame type, data rate and time interval in the invention of Honkasalo since it is generally considered to be within the ordinary skill in the art to adjust, vary, select or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value.

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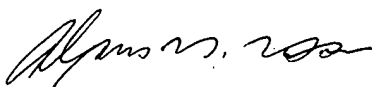
Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Philpott whose telephone number is 571.272.3162. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on 571.272.3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Justin M Philpott



**ALPUS H. HSU
PRIMARY EXAMINER**